

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**B & R SUPERMARKET, INC., d/b/a  
MILAM'S MARKET, a Florida corporation,  
et al., Individually and on Behalf of All  
Others Similarly Situated,**

Plaintiff,

V.

VISA, INC., a Delaware corporation, et al.,

Defendants.

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Case No. 1:17-cv-02738-MKB-JO

CLASS ACTION

# JOINT STATUS REPORT

**Conference Date: April 19, 2018**

Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") and defendants Mastercard International Inc. ("Mastercard"), Discover Financial Services ("Discover"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa"), and American Express Company ("American Express") (collectively, "Defendants") respectfully submit this joint report in advance of the status conference scheduled for April 19, 2018.

The following matters are currently pending for the Court's consideration as of the date of this joint report.

**Proposed Amended Order Regarding Case Schedule.** On March 14, 2018, Judge Brodie entered an order denying Plaintiffs' motion for class certification without prejudice. (Dkt. No. 644.) Plaintiffs anticipate filing a renewed motion for class certification and continue to seek certain additional discovery to address issues raised by Judge Brodie's Order. The parties have met and conferred and have agreed, subject to Court approval, to modify the case schedule to accommodate the filing and briefing of the renewed class certification motion and certain additional fact and expert discovery. The parties have agreed to an extension of the deadlines set forth in the Court's October 16, 2017 Scheduling Order as follows:

Event	Previous Deadline	Proposed New Deadline
Fact Discovery Cut-off <sup>1</sup>	April 30, 2018	June 14, 2018
Renewed Class Certification Motion	None	July 16, 2018

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<sup>1</sup> The forty-five (45) day extension of the current fact discovery deadline of April 30, 2018 is for the completion of: (1) non-party (non-named B&R Plaintiffs or Defendants) discovery in whatever form; and (2) meet and confer and document production on the currently served discovery on Defendants Visa, AMEX and Discover relating to network and acquirer data through October 2017. Notwithstanding the foregoing, the parties may agree to a reasonable postponement of depositions noticed only in this Action, if requested.

Event	Previous Deadline	Proposed New Deadline
Response to Renewed Class Certification Motion	None	No earlier than September 14, 2018
Reply to Renewed Class Certification Motion	None	No earlier than October 15, 2018
Hearing on Renewed Class Certification Motion	None	To be determined by the Court
Opening Expert Reports	May 31, 2018	To be determined, but in no event later than August 31, 2018
Expert Opposition Reports	September 28, 2018	To be determined
Expert Reply Reports	October 31, 2018	To be determined
Expert Discovery Cut-Off	December 28, 2018	To be determined, but in no event later than August 30, 2019
Filing of Dispositive Motions	February 15, 2019	To be determined
Responses to Dispositive Motions	March 29, 2019	To be determined
Replies to Dispositive Motions	April 30, 2019	To be determined
Hearing on Dispositive Motions	To be determined by the Court	To be determined by the Court

After the renewed motion for class certification is filed, the parties shall meet and confer regarding Defendants' requests for fact and expert discovery in response thereto. The parties shall also meet and confer regarding new dates for the remaining deadlines for expert merits reports and dispositive motions. Defendants Visa and Mastercard have agreed to this condition with the understanding that the deadlines for expert merits reports should not be later than the dates in the MDL 1720 action.

**Plaintiffs' Motion for Class Certification.** As set forth above, Judge Brodie entered an order denying Plaintiffs' motion for class certification without prejudice. (Dkt. No. 644.) Plaintiffs anticipate filing a renewed motion for class certification on July 16, 2018.

**Discover's Motion for Judgment Pursuant to Fed. R. Civ. Proc. 12(c).** Discover's Rule 12(c) motion was fully briefed and filed on November 2, 2017. (Dkt. No. 611.) The next day, Judge Brodie referred the motion to Magistrate Judge Orenstein for report and recommendation. Oral argument on the motion was held before Magistrate Judge Orenstein on January 23, 2018. The parties are awaiting Judge Orenstein's report and recommendation.

**Discover's Motion to Compel Arbitration.** In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018, (Dkt. No. 611), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to wait until Plaintiffs have filed a renewed motion for class certification and the Court has decided that motion before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

**Third-Party Discovery.** Plaintiffs have issued subpoenas to numerous third parties, including those that Plaintiffs believe have served as acquirers and/or processors with respect to merchant transactions identified in Defendants' production of transaction data. Plaintiffs are in the process of meeting and conferring with these third parties, which is in various stages, and anticipate that motion practice may become necessary. The data and information sought by these subpoenas will be utilized in Plaintiffs' forthcoming renewed motion for class certification.

Respectfully submitted this 12th day of April, 2018, by:

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

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